THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.28969 OF 1995

ORAL ORDER:

The petitioners claim to be the joint owners of the land to an extent of 647.77 sq. yards, situated at Yellammaguta of Nizamabad town. It is stated that the 1st respondent-Municipal Council, Nizamabad, had taken possession of the said land for the purpose of laying a road from Railway Under Bridge to Indian Hume Pipe Company as per the Master Plan. Pursuant to the representation dated 13.10.1987 made by the petitioners requesting payment of compensation for the acquired land, the 1st respondent passed a resolution dated 31.7.1989 to pay compensation. Accordingly, by letter dated 26.8.1984, the District Collector, Nizamabad, was requested to fix the cost of the land for payment of compensation as per rules. In turn, the District Collector by proceedings dated 23-7-1991 fixed the value of the land in question at the rate of Rs.250/- per sq. yard. The Regional Deputy Director of Town Planning after spot inspection submitted a report dated 24-8-1992 stating that the site utilized was 405 sq. yards. On the basis of the same, the Director of Town & Country Planning, Government of A.P. by letter dated 13-7-1993 recommended the Government of A.P. for payment of compensation of Rs.1,01,250/- at the rate of Rs.250/- per sq. yard for the total extent of 405 sq. yards belonging to the petitioners. In pursuance thereof, the Government has issued G.O.Rt.No.1626 dated 13.12.1993 according permission to the Commissioner, Nizamabad Municipality, for payment of Rs.1,01,250/- to the petitioners towards compensation for the land utilized for formation of the road.

Aggrieved by the quantum of compensation fixed by the respondents, this writ petition is filed contending *inter alia* that the total land utilized for formation of road was 647.77 sq. yards but not 405 sq. yards as stated in G.O.Ms.No.1626, dated 13-12-1993. The value

fixed by the respondents is also disputed, contending that as per the prevailing market value, the respondents ought to have paid Rs.400/- per square yard. It is further contended that the action of the respondents in not initiating proceedings under the Land Acquisition Act for payment of compensation to the petitioners in spite of the fact that the possession of the land was taken in the year 1987 is arbitrary and illegal.

Hence, the petitioners sought a writ of mandamus declaring the action of the respondents in not paying compensation for their land measuring 647.77 square yards as arbitrary and illegal and consequently to direct the respondents to initiate proceedings under the Land Acquisition Act and to pay the compensation accordingly.

In the counter-affidavit filed on behalf of the 1st respondent, it is stated that a kutcha road was in existence through the land of the petitioners and other adjacent land owners, which was being used for a long time. All the land owners had voluntarily left the said space for the purpose of laying the road and requested the 1st respondent to provide a metal road. Having considered their request, respondents laid the road for the public convenience and a letter was addressed to the District Collector, Nizamabad for fixing the rate for payment of compensation. In pursuance thereof, the District Collector, Nizamabad, after making necessary enquiry informed that as per the prevailing market value in the location, the rate of land does not exceed Rs.250/- per square yard. Accordingly, the Municipal Council, Nizamabad passed a resolution for payment of compensation of Rs.1,01,250/- to the petitioners at the rate of Rs.250/- per square yard for a total area of 405 square yards. The claim of the petitioners that 647.77 square yards of land belonging to them was acquired has been denied and it is stated that the 1st respondent has utilized the land only to an extent of 405 square yards for the purpose of laying 40 feet wide road from Railway Under Bridge to Indian Hume Pipe Company. As a

matter of fact, the petitioners made a request to pay compensation for the affected area covered by the said 40 feet wide road only. Having considered their request a resolution for payment of compensation was passed by the 1st respondent.

I have heard the learned counsel for both the parties.

From the material placed before this Court, it is clear that G.O.Rt.No.1626 dated 13.12.1993 was issued according permission to the Nizamabad Municipality for payment of compensation to the tune of Rs.1,01,250/- to the petitioners. The said amount was fixed by the District Collector, Nizamabad, who is the competent authority, after making an enquiry as to the prevailing market value of the lands in the locality as well as the actual extent of land utilized for laying the road. Except an averment in their affidavit that the compensation fixed at the rate of Rs.250/- per sq. yard is too low and without any basis, the petitioners could not place any material before this Court to substantiate their claim at the rate of Rs.400/- per sq. yard.

Even with regard to the extent of the land utilized by the 1st respondent, though the petitioners claimed that 647.77 square yards of land was affected for formation of the road, the said version was categorically denied by the respondents. Such a disputed question of fact cannot be enquired into and decided by this Court in exercise of the jurisdiction under Article 226 of the Constitution of India. In the circumstances, the relief as prayed for cannot be granted.

However, having regard to the facts and circumstances of the case, the writ petition is disposed of with a direction to the 1st respondent to pay the admitted sum of Rs.1,01,250/- as sanctioned under G.O.Rt.No.1626 dated 13.12.1993 within a period of eight weeks from the date of receipt of a copy of this order.

It is made clear that this shall not preclude the petitioners to work out the appropriate remedy as available under law either for determination of their claims with regard to extent of land utilized for formation of the road as well as the value of the land so utilized. No

costs.

_____

(G. ROHINI, J.)

10th October, 2006.
Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.28969 OF 1995

10th October, 2006.

Between:

Chowki Parandamulu and others. .. Petitioners.

And

The Municipal Council of Nizamabad,
represented by its Commissioner and others. .. Respondents,